IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1660 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOTAK MAHINDRA PRIME LIMITED THRO' ATUL MODI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR TS NANAVATI for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/09/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner – original applicant has prayed for an appropriate order to

quash and set aside the order dated 8.5.2007 passed by the learned Metropolitan Magistrate, Court No.14, Ahmedabad passed in criminal case No. 7225 of 2006 and the subsequent order dated 11.5.2007 passed by the Additional Principal Judge, Court No.2, City Sessions Court, Ahmedabad passed in Criminal Revision Application No.207 of 2007 by permitting the petitioner to sell and dispose of the Mudamal Tata Indica car having Engine No. 475 IDOIEXZP 3376 and Chassis No. 600141ewzp37037 and bearing RTO registration No. GJ.1.HF.4786.

2. A vehicle in question is of the ownership of one Adalkhan Bashirkhan Pathan who has purchased the said Tata Indica car by taking loan of Rs.2,92,000/- from Tata Finance Limited and it is the contention on behalf of the petitioner that the petitioner company has been assigned vide Deed of Assignment and thereby assigned the debt payable by the debtor along with security, interest and underlying security by the Principal Finance Company named Tata Motors

Limited – Erstwhile Tata Finance Limited under the agreement executed by and between the two companies. It is the case on behalf of the petitioner that on 24.5.2006 due and payable total amount was of Rs.2,39,344.25 ps. That the vehicle in question is seized as Mudamal in connection with complaint / FIR being I CR No. 124 of 2006 by Dani Limda Police Station for the offence under sections 399, 400, 402, 120(b) of the Indian Penal Code, section 25(1)(b) of Arms Act r.w. section 135(1) of the Bombay Police Act which is now registered as criminal case No. 7225 of 2006 pending in the Court of learned Metropolitan Magistrate, Court No. 14, Ahmedabad. That the petitioner submitted an application before the learned Metropolitan Magistrate under section 451 of the Criminal Procedure Code for possession and sale of the said vehicle and the said application came to be heard and disposed of vide order dated 17.4.2007 passed by the learned Metropolitan Magistrate, Court No. 14, Ahmedabad and the possession of the said motorcar was ordered to be handed over

to the petitioner on condition of furnishing bond for an amount of Rs.2,25,000/- and accordingly, the possession of the vehicle in question was handed over to the petitioner. It is the case on behalf of the petitioner that thereafter the petitioner subsequently approached the Court of learned Metropolitan Magistrate for modification of the condition of order dated 17.4.2007 by permitting the petitioner – original applicant to sell and dispose of the vehicle in question. That the learned Metropolitan Magistrate, Court No.14, Ahmedabad by its order dated 8.5.2007 rejected the said application. Being aggrieved and dissatisfied with the order passed by the learned Metropolitan Magistrate, Court No.14, Ahmedabad dated 8.5.2007 rejecting the application of the petitioner permitting to sell and dispose of the vehicle in question, the petitioner preferred Criminal Revision Application before the learned City Sessions Court, Ahmedabad being Criminal Revision Application No. 207 of 2007 and the said

application also came to be dismissed by the learned Revisional Court confirming the order passed by the learned Metropolitan Magistrate, Court No.14, Ahmedabad dated 8.5.2007. Being aggrieved and dissatisfied with the aforesaid two orders in rejecting the applications of the petitioner for granting it permission to sell and dispose of the vehicle in question, the petitioner – original applicant has preferred present petition under Article 227 of the Constitution of India for the aforesaid reliefs.

3. Shri T.S.Nanavati, learned advocate appearing for the petitioner has submitted that both the Courts below have failed to appreciate the contentions raised in the application which justify the disposal of the said vehicle which is lying in idle condition and losing its value day by day. He has also further submitted that no prejudice is likely to be caused in disposing of the said vehicle as the question of identity of the vehicle in any inquiry or trial is not a question and more over, at the time of trial the

production of vehicle before the trial Court can be assured from the subsequent purchaser. It is also further submitted that if the petitioner – original applicant is not permitted to sell and dispose of the vehicle in question, a grave prejudice will be caused to the petitioner and therefore, it is requested to allow the present petition.

4. Petition is opposed by Shri K.T.Dave, learned APP appearing for the State and has submitted that as the vehicle in question has been seized as Mudamal vehicle for the offence under sections 399, 400, 402, 120(b) of the Indian Penal Code, section 25(1)(b) of Arms Act r.w. Section 135(1) of the Bombay Police Act and therefore, if the petitioner is permitted to sell and dispose of the vehicle in question, the same will not be available subsequently and even the subsequent purchaser also cannot be directed to produce the vehicle in question as the subsequent purchaser would neither be the complainant nor accused nor witness. It is

submitted that as observed by the learned Revisional Court, Mudamal vehicle is a valuable evidence and therefore, once the vehicle is permitted to sell and disposed of, the vital evidence would not be available and therefore, it is requested to dismiss the present petition. It is also further submitted by Shri Dave, learned APP that the contention on behalf of the petitioner that if the vehicle is lying in idle condition the same would lose its value day by day cannot be accepted as the possession of the vehicle is already with the company on certain conditions as per the order dated 17.4.2007 and the same can be used by the company and it is ultimately for the petitioner company to keep the vehicle in idle condition or not. Under the circumstances, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that

the vehicle in question is seized by the Dani Limda Police Station in connection with the complaint for the offence punishable under sections 399, 400, 402, 120(b) of the Indian Penal Code, section 25(1)(b) of Arms Act r.w. Section 135(1) of the Bombay Police Act and the same is seized as Mudamal vehicle. As rightly observed by the learned Revisional Court that when Mudamal car is involved in a criminal case, the said Mudamal is always an important article. The learned Revisional Court has on valid reason rejected the revision application confirming the order passed by the learned trial Court rejecting the application of the petitioner to sell and dispose of the vehicle in question. It cannot be disputed that in a case like this the Mudamal car is always an important article and evidence and if the petitioner is permitted to sell and dispose of the vehicle, in that case, an important Mudamal vehicle would not be available thereafter. Even if, prayer of the petitioner is accepted to the extent that vehicle in question may be permitted to be sold

to third party on condition that the third party will purchase the vehicle in question with condition to produce the vehicle in question as and when required, however, the same is likely to cause further complications and multiplicity of proceedings. The third party who will purchase the vehicle will be neither the witness nor complainant nor the accused and they will not be connected with the criminal case at all.

7. Now, so far as the contention of the petitioner that if the vehicle in question is not permitted to be sold and/or disposed of, in that case, the vehicle which is lying in idle condition would lose its value day by day is concerned, at the outset, it is to be noted that by earlier order the learned Magistrate has already handed over the possession of the vehicle in question to the applicant on certain conditions and therefore, the petitioner company can use the said vehicle rather than keeping it in an idle condition.

8. This is a petition under Article 227 of the

Constitution of India and on considering the orders passed by both the Courts below, it appears to the Court that for valid and justifiable reasons both the Courts below have rejected the application of the petitioner to sell and dispose of the Mudamal vehicle in question. There is no jurisdictional error much less an error of law committed by any of the Courts below, which requires to be interfered with by this Court in exercise of the powers under Article 227 of the Constitution of India. Under the circumstances, there is no substance in the present petition and the same deserves dismissal and is accordingly dismissed.

[M.R.Shah, J.]

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